IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 411 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

DY.COLLECTOR PALANPUR

Appearance:

1. Special Civil Application No. 411 of 2003

Mr.Desai, AGP for Petitioner No. 1

NOTICE SERVED for Respondent No. 1-2

..... for Respondent No. 3

MR MEHUL H RATHOD for Respondent No. 4

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 21/04/2003

ORAL JUDGEMENT

Leave to delete respondent Nos 1,2 & 3 who did not contest the matter before the tribunal.

2. Rule. Mr.Rathod waives service of rule on behalf of original respondent No.4 who was respondent No.1 after deletion of aforesaid respondent Nos 1,2 & 3. With the consent of the parties matter is taken up for final hearing.

3. The only question involved in this petition is the delay caused in preferring revision application before the Gujarat Revenue Tribunal by the petitioner herein.

4. The present petition is preferred by the petitioner challenging the legality and validity of the order, dated 9.7.01 passed by the Gujarat Revenue Tribunal in Revision Application No.141/01 whereby instead of examining the revision application on merits the tribunal has dismissed the revision application preferred by the State on the ground of delay since it was found by the tribunal that no sufficient cause is made out for condoning the delay caused in preferring the revision before the tribunal.

5. On the other hand, Mr.Desai, Ld.AGP submitted that there is negligence on the part of the officer of the State Govt in not taking proper steps for the purpose of preferring revision application before the tribunal within stipulated time limit. However, he submitted that such negligence should not disentitle the State to prefer revision application if, in any case, the same can be compensated by costs.

6. Mr.Rathod, learned advocate appearing for the contesting respondent before the tribunal also at the outset submitted that if this court finds that the tribunal could have considered the matter on merits, then his client would not object for the hearing of revision application before the tribunal on merits and if the delay is compensated by appropriate costs which may be awarded by this court. and, he submitted that any observations which may be made by this court even during the course of considering the matter for condonation of delay may affect the rights of other party including his client.

7. In view of the above, I am of the view that when it is the stand of the State Govt that because of negligence on the part of certain officers delay was caused in preferring revision application before the

tribunal and when the learned advocate appearing for the contesting respondent has also submitted that appropriate costs may be awarded while condoning the delay it is not required to be discussed in detail but, in my view, considering the facts and circumstances of the case, the tribunal could have condoned the delay by awarding suitable costs to the contesting respondent. Since the same is not considered by the tribunal, I am of the view that the order passed by the tribunal deserves to be quashed. However, at the same time, the State Govt which has, may be because of its officer, remained negligent in prosecuting the matter within stipulated time limit, can not be allowed to take undue benefit of its own wrong. If such delay is viewed leniently, it would encourage the litigant to play dilatory tactics, and more particularly, when the State officers have, to some extent, shown negligence, and the costs, if any, awarded by the court should be recovered from the concerned erring officer.

8. In view of the aforesaid discussion, the order passed by the tribunal, dated 9.7.01 in Revision Application No.141/01 at annexure "A" to the petition is quashed and set aside on condition that the petitioner-State shall pay a sum of Rs.2,500/- towards the costs to the contesting respondent herein within two months from the date of receipt of writ of this court and after such amount of costs is paid by the petitioner-State to the contesting respondent, the State shall make application to the tribunal and the tribunal shall decide the Revision Application No.141/01 on merits. It is made clear that all the contentions including the contention on the question of delay in initiating action and passing order which is subject matter of the proceedings of revision application are kept open.

9. It is further directed that the Deputy Secretary, Revenue Department, State of Gujarat shall inquire into the matter regarding the extent of liability of the concerned erring officer in preferring revision application before the tribunal and after holding such inquiry, if it is found that the concerned officer remained negligent in prosecuting the matter, and it will be open to the State Govt to recover the said amount of Rs.2,500/- which is awarded towards costs to the contesting respondent from the concerned erring officer. The compliance of this part of the order shall be reported to this court within six months from today.

10. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. DS permitted.

21.4.03 (JAYANT PATEL,J)